

General Information Letter: A taxpayer subject to Michigan Single Business Tax is taxable in Michigan for purposes of allocation and apportionment of income.

April 27, 2001

Dear:

This is in response to your letter dated March 14, 2001, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

This is a follow up to a recent telephone discussion we had concerning the Michigan Single Business Tax. In that conversation, I asked if Illinois would tax income related to Michigan activities of an Illinois corporation. As I recall, the answer appeared to be different depending on the activities of the Illinois taxpayer carried on in the State of Michigan. In other words, it was my understanding from our conversation that if the taxpayer had enough activity in Michigan that would give Michigan the power to impose a net income tax under 15 U.S.C. § 381 (PL86/272) then Illinois would not tax the income generated from business carried on in the State of Michigan. On the other hand, if activities in the State of Michigan did not rise to the level that would allow Michigan to impose a net income tax under PL86/272, Illinois would tax the income generated with respect to those Michigan activities.

I would appreciate very much if you could comment on my statements above, as well as any information you could provide with respect to Illinois giving credit for Michigan Single Business Tax which has been referred to either as a net income tax or value added tax.

Response

There are two issues in your request. The first involves the possible throwback of sales of tangible personal property to purchasers in Michigan. The second involves the allowance of a credit for Michigan Single Business Tax paid.

Throwback of Sales

Section 304(a)(3)(B)(ii) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides that gross receipts from a sale of tangible personal property are included in the Illinois numerator of the sales factor if:

The property is shipped from an office, store, warehouse, factory or other place of storage in this State and either the purchaser is the United States government or the [taxpayer] is not taxable in the state of the purchaser.

The IITA itself does not provide standards for determining when a taxpayer is "taxable in the state of the purchaser" for purposes of this throwback rule. However, 86 Ill. Adm. Code Section 100.3200(a)(1) provides that the standards provided in Section 303(f) of the IITA shall apply to the throwback rule as well as to Section 303. Section 303(f) provides:

For purposes of allocation of income pursuant to this Section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

This provision is taken from Section 3 of the Uniform Division of Income for Tax Purposes Act.

In order to determine how this provision applies in the case of sales of tangible personal property to a purchaser in Michigan, it is necessary to determine if the Michigan Single Business tax falls into any of the categories of tax listed. I have found no case in which the issue of whether a taxpayer subject to Michigan Single Business Tax would be considered to be taxable in Michigan under the IITA, or under Section 3 of the Uniform Division of Income for Tax Purposes Act or any state law modeled after that provision.

The United States Supreme Court has held that the Michigan Single Business Tax is not an income tax. See *Trinova Corp. v. Michigan Dept. of Treasury*, 111 S.Ct. 818 (1991). Accordingly, a taxpayer subject to the Michigan Single Business Tax is not "taxable in the state of the purchaser" under Section 303(f)(1) by reason of being subject to a "net income tax" or a "franchise tax measured by net income." In addition, it is clear that the Michigan Single Business Tax is not a "corporate stock tax." A taxpayer subject to Michigan Single Business Tax will therefore be subject to tax in Michigan within the meaning of Section 303(f)(1) only if the Michigan Single Business Tax is a "franchise tax for the privilege of doing business."

The term "franchise tax for the privilege of doing business" is not defined in the IITA, in regulations, in the Uniform Division of Income for Tax Purposes Act, nor in any published case construing the IITA or Section 3 of the Uniform Division of Income for Tax Purposes Act. "Franchise tax" is defined in BLACK'S LAW DICTIONARY (Rev. 4th Ed. 1968) to mean:

A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it.

Pursuant to Section 208.31(3), the Michigan Single Business Tax is imposed "upon the privilege of doing business." The tax is levied on every person, including corporations, with business activity in Michigan. Section 208.31(1). In addition, in *Trinova*, the United States Supreme Court noted that the Michigan Single Business Tax was enacted to replace the Michigan franchise Tax, along with

several other taxes that could be imposed on businesses. 111 S.Ct. at 825. Accordingly, the Michigan Single Business Tax is Michigan's tax imposed on corporations for the privilege of doing business in Michigan, and is therefore a "franchise tax for the privilege of doing business" within the meaning of Section 303(f) of the IITA. A person subject to Michigan Single Business Tax is therefore taxable in Michigan, and sales by that person of tangible personal property to purchasers in Michigan are not thrown back to Illinois under Section 304(a)(3)(B)(ii) of the IITA.

Credit for Payment of Michigan Single Business Tax

Your letter also inquires about allowing a credit for Michigan Single Business Tax. Section 601(b)(3) of the IITA allows residents a credit for taxes "imposed on or measured by income" by another state. As noted in the *Trinova* case, the Michigan Single Business Tax is not imposed on or measured by net income. Accordingly, no credit can be allowed under Section 601(b)(3) for payment of the Michigan Single Business Tax.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax